

**Harvey Reed's Lawn & Garden Care Services Co.
and Lloyd Lazard and Barth C. Phillips. Cases
15-CA-13448 and 15-CA-13481**

August 22, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge and an amended charge filed in Case 15-CA-13448 on September 28 and November 9, 1995, respectively, and a charge filed in Case 15-CA-13481 on October 19, 1995, the General Counsel of the National Labor Relations Board issued a complaint in Case 15-CA-13448 on November 21, 1995, and a consolidated complaint in both cases on December 13, 1995, against Harvey Reed's Lawn & Garden Care Services Co., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer to either the complaint or consolidated complaint.

On July 26, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On July 29, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 10, 1996, notified the Respondent that unless an answer was received by July 17, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,¹ we grant the General Counsel's Motion for Summary Judgment.

¹ By letter dated July 2, 1996, the Respondent's counsel advised the Region that the Respondent had not filed a response to the complaint because it would be useless due to its financial situation, and that the Respondent was contemplating bankruptcy. However, neither the Respondent's financial situation nor the fact that it is contemplat-

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in New Orleans, Louisiana, has been engaged in business as a landscaping and lawn maintenance contractor. During the 12-month period ending October 31, 1995, the Respondent provided services valued in excess of \$50,000 for Harrah's Casino New Orleans, an enterprise within the State of Louisiana, which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About September 7, 1995, the Respondent's owner, Harvey Reed, at its New Orleans, Louisiana facility, threatened its employees with unspecified reprisals because they engaged in union or protected concerted activities. About September 10, 1995, the Respondent's leadman and night supervisor, Alex Smith, at the Harrah's Casino jobsite, threatened employees with discharge if they engaged in union or protected concerted activities. About September 15, 1995, the Respondent, by owner Harvey Reed, at the Harrah's Casino jobsite, threatened employees with unspecified reprisals because they engaged in union or protected concerted activities. About September 15, 1995, the Respondent, by Alex Smith, at the Harrah's Casino jobsite, threatened employees with discharge if they continued to engage in union or protected concerted activities. About mid-September 1995, the Respondent, by Alex Smith, at the Harrah's Casino jobsite, threatened its employees with discipline if they continued to engage in union or protected concerted activities. About September 16, 1995, the Respondent, by Alex Smith, at the Harrah's Casino jobsite, prohibited its employees from discussing the union or taking complaints to Federal Government agencies.

About September 23, 1995, the Respondent terminated its employee Barth C. Phillips. About September 27, 1995, the Respondent terminated its employee Lloyd Lazard. The Respondent discharged these two employees because they formed, joined, or assisted unions, because they engaged in protected concerted activities with each other and complained to Harvey Reed about terms and conditions of employment, and

ing bankruptcy constitute good cause for failure to file an answer or is otherwise a basis for denying the Motion for Summary Judgment. See, e.g., *K & D Painting*, 316 NLRB 1196 (1995); *Beaumont Glass Co.*, 316 NLRB 35 (1995); and *New Method Cleaners*, 314 NLRB 126 (1994).

to discourage employees from engaging in these and other concerted activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discharging Lloyd Lazard and Barth C. Phillips, the Respondent has also been discriminating in regard to the hire or tenure or terms and conditions of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Lloyd Lazard and Barth C. Phillips, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Harvey Reed's Lawn & Garden Care Services Co., New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with unspecified reprisals if they engage in union or protected concerted activities.

(b) Threatening its employees with discharge if they engage in union or protected concerted activities.

(c) Threatening its employees with discipline if they engage in union or protected concerted activities.

(d) Prohibiting its employees from discussing the union or taking complaints to Federal governmental agencies.

(e) Discharging employees because they engage in union or protected concerted activities, or to discourage employees from engaging in such activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Lloyd Lazard and Barth C. Phillips full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Lloyd Lazard and Barth C. Phillips whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, as set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 3 days thereafter, notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New Orleans, Louisiana, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 28, 1995.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with unspecified reprisals if they engage in union or protected concerted activities.

WE WILL NOT threaten employees with discharge if they engage in union or protected concerted activities.

WE WILL NOT threaten employees with discipline if they engage in union or protected concerted activities.

WE WILL NOT prohibit employees from discussing the union or taking complaints to Federal governmental agencies.

WE WILL NOT discharge employees because they engage in union or protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Lloyd Lazard and Barth C. Phillips full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Lloyd Lazard and Barth C. Phillips whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Lloyd Lazard and Barth C. Phillips, and, within 3 days thereafter, notify them in writing that this has been done and that the discharge will not be used against them in any way.

HARVEY REED'S LAWN & GARDEN
CARE SERVICES CO.